

AMENDED IN SENATE APRIL 22, 2015

AMENDED IN SENATE MARCH 23, 2015

**SENATE BILL**

**No. 253**

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**Introduced by Senator Monning**  
(Principal coauthor: Assembly Member Chiu)  
**(Coauthor: Senator Beall)**  
(Coauthor: Assembly Member Gatto)

February 18, 2015

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An act to amend Section 369.5 of the Welfare and Institutions Code, relating to juveniles.

LEGISLATIVE COUNSEL'S DIGEST

SB 253, as amended, Monning. Dependent children: psychotropic medication.

Existing law establishes the jurisdiction of the juvenile court, which may adjudge children to be dependents of the court under certain circumstances, including when the child suffered or there is a substantial risk that the child will suffer serious physical harm, or a parent fails to provide the child with adequate food, clothing, shelter, or medical treatment. Existing law authorizes only a juvenile court judicial officer to make orders regarding the administration of psychotropic medications for a dependent child who has been removed from the physical custody of his or her parent. Existing law requires the court authorization for the administration of psychotropic medication to a child be based on a request from a physician, indicating the reasons for the request, a description of the child's diagnosis and behavior, the expected results of the medication, and a description of any side effects of the medication.

This bill would require that an order authorizing the administration of psychotropic medications to a dependent child be granted only upon

the demonstration of clear and convincing evidence that ~~specified criteria are met, including administration of the medication is in the best interest of the child and the court determines that specified requirements have been met, including~~ a requirement that the prescribing physician ~~attest under penalty of perjury confirms~~ that he or she has conducted a comprehensive evaluation of the child, as specified. The bill would prohibit the court from authorizing the administration of psychotropic medications to a child under other specified circumstances, unless a 2nd independent medical opinion is obtained from a child psychiatrist or a psychopharmacologist. The bill would prohibit the court from authorizing the administration of a psychotropic medication unless the court is provided documentation that appropriate screenings and tests for the child have been completed no more than 30 days prior to submission of the request to the court. The bill would impose additional requirements on the court to implement these provisions and to conduct review hearings, as specified. The bill would require the Judicial Council to adopt rules to implement these provisions.

~~By requiring the attestation of the prescribing physician under penalty of perjury, as described above, this bill would create a crime and impose a state-mandated local program.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: ~~yes~~no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 369.5 of the Welfare and Institutions
- 2 Code is amended to read:
- 3 369.5. (a) If a child is adjudged a dependent child of the court
- 4 under Section 300 and the child has been removed from the
- 5 physical custody of the parent under Section 361, only a juvenile
- 6 court judicial officer shall have authority to make orders regarding
- 7 the administration of psychotropic medications for that child. The
- 8 juvenile court may issue a specific order delegating this authority
- 9 to a parent upon making findings on the record that the parent
- 10 poses no danger to the child and has the capacity to authorize

1 psychotropic medications. Court authorization for the  
2 administration of psychotropic medication shall be based on a  
3 request from a physician, indicating the reasons for the request, a  
4 description of the child's diagnosis and behavior, the expected  
5 results of the medication, and a description of any side effects of  
6 the medication. On or before July 1, 2016, the Judicial Council  
7 shall adopt rules of court and develop appropriate forms for  
8 implementation of this section. Whenever the court authorizes the  
9 administration of a psychotropic medication, it shall ensure that  
10 the administration of the psychotropic medication is only one part  
11 of a comprehensive treatment plan for the child that shall include  
12 and specify the psychosocial services the child will receive in  
13 addition to any authorized medication.

14 (b) (1) An order authorizing the administration of psychotropic  
15 medications pursuant to this section shall only be granted on clear  
16 and convincing evidence ~~of all of the following: that administration~~  
17 *of the medication is in the best interest of the child based on a*  
18 *determination that the anticipated benefits of the psychotropic*  
19 *medication outweigh the short- and long-term risks associated*  
20 *with the medications.*

21 (2) An order authorizing the administration of psychotropic  
22 medications pursuant to this section shall only be granted if the  
23 court determines all of the following:

24 (A) The medication is not being used as punishment, for the  
25 convenience of staff, as a substitute for other, less invasive  
26 treatments, or in quantities or dosages that interfere with the child's  
27 treatment program.

28 ~~(B) If the child is 12 years of age or older, the child, after being~~  
29 ~~advised of alternative treatments and informed of the benefits and~~  
30 ~~risks of the medication, understands his or her right to refuse the~~  
31 ~~medication, and has given his or her written informed consent.~~

32 (B) *The court is provided documentation confirming the child's*  
33 *caregiver has been informed, and the child has been informed in*  
34 *an age and developmentally appropriate manner, about the*  
35 *recommended medications, the anticipated benefits, the nature,*  
36 *degree, duration, and probability of side effects and significant*  
37 *risks commonly known by the medical profession, and of*  
38 *psychosocial treatments to be considered concurrently with or as*  
39 *an alternative to the medication.*

1     (i) *The documentation shall state that the child and the child's*  
2 *caregiver have been asked whether either have concerns regarding*  
3 *the medication, and if so, shall describe the nature of those*  
4 *concerns. The documentation shall confirm that the child has been*  
5 *informed of the right to request a hearing pursuant to subdivision*  
6 *(g).*

7     (ii) *The documentation shall include the written informed*  
8 *consent of a child who is 14 years of age or older, after being*  
9 *advised pursuant to this subparagraph.*

10    (C) ~~The prescribing physician submitting the request for~~  
11 ~~psychotropic medication attests under penalty of perjury confirms~~  
12 ~~that he or she conducted a comprehensive examination of the child~~  
13 ~~in compliance with Section 2242 of the Business and Professions~~  
14 ~~Code that takes into account the child's trauma and medication~~  
15 ~~history and is based upon multiple sources, including, among~~  
16 ~~others, the child's medical records, the child, the child's parents,~~  
17 ~~relatives, teacher, caregiver or caregivers, past prescribers of~~  
18 ~~psychotropic medication, or other health care providers. The~~  
19 ~~prescribing physician shall also attest that the dosage or dosage~~  
20 ~~range requested is appropriate for the child. and consistent with~~  
21 ~~the Psychiatric Evaluation and Diagnosis provisions included in~~  
22 ~~the Guidelines for the Use of Psychotropic Medication with~~  
23 ~~Children and Youth in Foster Care issued by the state, which takes~~  
24 ~~into account all of the following:~~

25     (i) *The child's trauma history.*

26     (ii) *The child's medical records, including medication history.*

27     (iii) *Multiple sources of information, including, but not limited*  
28 *to, the child, the child's parents, relatives, teacher, caregiver or*  
29 *caregivers, past prescribers of psychotropic medication, or other*  
30 *health care providers.*

31    ~~(D) The short- and long-term risks associated with the use of~~  
32 ~~psychotropic medications by the child does not outweigh the~~  
33 ~~reported benefits to the child.~~

34    ~~(E) There are no less invasive and effective treatment options~~  
35 ~~available to meet the needs of the child.~~

36    (D) *The prescribing physician shall also confirm all of the*  
37 *following:*

38     (i) *There are no less invasive and effective treatment options*  
39 *available to meet the needs of the child.*

1     (ii) *The dosage or dosage range requested is appropriate for*  
2 *the child.*

3     (iii) *The short- and long-term risks associated with the use of*  
4 *psychotropic medications by the child does not outweigh the*  
5 *reported benefits to the child.*

6     (iv) *All appropriate lab screenings, measurements, or tests for*  
7 *the child have been completed in accordance with accepted medical*  
8 *guidelines.*

9     (E) *A plan is in place for regular monitoring of the child's*  
10 *medication and psychosocial treatment plan, the effectiveness of*  
11 *the medication and psychosocial treatment, and any potential side*  
12 *effects of the medication, by the physician in consultation with the*  
13 *caregiver, mental health care provider, and others who have*  
14 *contact with the child, as appropriate.*

15     (2) The person or entity submitting the request for authorization  
16 of the administration of psychotropic medication shall bear the  
17 burden of proof established in this section.

18     (c) A court shall not issue an order authorizing the administration  
19 of psychotropic medications for a child unless a second  
20 independent medical opinion is obtained from a child psychiatrist  
21 or a psychopharmacologist if one or more of the following  
22 circumstances exist:

23         (1) The request is for any class of psychotropic medication for  
24 a child who is five years of age or younger.

25         (2) The request would result in the child being administered  
26 three or more psychotropic medications concurrently.

27         (3) The request is for the concurrent administration of any two  
28 drugs from the same class unless the request is for medication  
29 tapering and replacement that is limited to no more than 30 days.

30         (4) The request is for a dosage that exceeds the amount  
31 recommended for children.

32         (5) The request is for the administration of a psychotropic  
33 medication *that is subject to a federal Food and Drug*  
34 *Administration black box warning requirement or is for the*  
35 *administration of an antipsychotropic medication* for a use that  
36 is not approved by the federal Food and Drug Administration for  
37 children or adolescents.

38     (d) The court shall not authorize the administration of the  
39 psychotropic medication unless the court is provided  
40 documentation that all of the appropriate lab screenings,

1 measurements, or tests for the child have been completed in  
2 accordance with accepted medical guidelines no more than 30 days  
3 prior to submission of the request to the court.

4 (e) (1) No later than ~~45~~ 60 days after the authorization of a new  
5 psychotropic medication is granted or at the next review hearing  
6 scheduled for the child pursuant to Section 366, 366.21, 366.22,  
7 or 366.31, ~~whichever is earlier~~, *if scheduled no earlier than 45*  
8 *days after the authorization of a new psychotropic medication*, the  
9 court shall conduct a review hearing to determine all of the  
10 following:

11 (A) Whether the child is taking the medication or medications.

12 (B) *Whether psychosocial services and other aspects of the*  
13 *child's treatment plan have been provided to the child.*

14 ~~(B)~~

15 (C) To what extent the symptoms for which the medication or  
16 medications were authorized have been alleviated.

17 ~~(C)~~

18 (D) What, if any, adverse effects the child has suffered.

19 ~~(D)~~

20 (E) Any steps taken to address those effects.

21 ~~(E)~~

22 (F) The date or dates of followup visits with the prescribing  
23 physician since the medication or medications were authorized.

24 (G) *Whether the appropriate followup laboratory screenings*  
25 *have been performed and their findings.*

26 (2) If based upon this review, the court determines that the  
27 proffered benefits of the medication have not been demonstrated  
28 or that the risks of the medication outweigh the benefits, the court  
29 shall reconsider, modify, or revoke its authorization for the  
30 administration of medication.

31 (f) (1) In counties in which the county child welfare agency  
32 completes the request for authorization for the administration of  
33 psychotropic medication, the agency is encouraged to complete  
34 the request within three business days of receipt from the physician  
35 of the information necessary to fully complete the request.

36 (2) Nothing in this subdivision is intended to change current  
37 local practice or local court rules with respect to the preparation  
38 and submission of requests for authorization for the administration  
39 of psychotropic medication.

1 (g) Within seven court days from receipt by the court of a  
2 completed request, the juvenile court judicial officer shall either  
3 approve or deny in writing a request for authorization for the  
4 administration of psychotropic medication to the child, or shall,  
5 upon a request by the parent, the legal guardian, or the child's  
6 attorney, or upon its own motion, set the matter for hearing.

7 (h) Psychotropic medication or psychotropic drugs are those  
8 medications administered for the purpose of affecting the central  
9 nervous system to treat psychiatric disorders or illnesses. These  
10 medications include, but are not limited to, anxiolytic agents,  
11 antidepressants, mood stabilizers, antipsychotic medications,  
12 anti-Parkinson agents, hypnotics, medications for dementia, and  
13 psychostimulants.

14 (i) Nothing in this section is intended to supersede local court  
15 rules regarding a minor's right to participate in mental health  
16 decisions.

17 (j) This section shall not apply to nonminor dependents, as  
18 defined in subdivision (v) of Section 11400.

19 ~~SEC. 2. No reimbursement is required by this act pursuant to~~  
20 ~~Section 6 of Article XIII B of the California Constitution because~~  
21 ~~the only costs that may be incurred by a local agency or school~~  
22 ~~district will be incurred because this act creates a new crime or~~  
23 ~~infraction, eliminates a crime or infraction, or changes the penalty~~  
24 ~~for a crime or infraction, within the meaning of Section 17556 of~~  
25 ~~the Government Code, or changes the definition of a crime within~~  
26 ~~the meaning of Section 6 of Article XIII B of the California~~  
27 ~~Constitution.~~